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STATE OF WASHINGTON

SUPREME COURT
OF THE STATE OF WASHINGTON

COLUMBIA PHYSICAL THERAPY, INC., P.S.,

Petitioner,

v.

BENTON FRANKLIN ORTHOPEDIC ASSOCIATES, P.L.L.C.; ET

AL.,

Respondents

BRIEF OF AMICI CURIAE

THE WASHINGTON STATE MEDICAL ASSOCIATION, THE AMERICAN
MEDICAL ASSOCIATION, THE WASHINGTON OSTEOPATHIC
MEDICAL ASSOCIATION, THE BENTON-FRANKLIN COUNTY
MEDICAL SOCIETY, THE PIERCE COUNTY MEDICAL SOCIETY, THE
THURSTON-MASON COUNTY MEDICAL SOCIETY, THE CLARK
COUNTY MEDICAL SOCIETY, THE YAKIMA COUNTY MEDICAL
SOCIETY, THE SPOKANE COUNTY MEDICAL SOCIETY, THE WALLA
WALLA VALLEY MEDICAL SOCIETY, THE WASHINGTON SOCIETY OF
PHYSICAL MEDICINE & REHABILITATION, THE AMERICAN SOCIETY
OF ANESTHESIOLOGISTS, THE WASHINGTON STATE SOCIETY OF
ANESTHESIOLOGISTS, THE WASHINGTON STATE PSYCHIATRIC
ASSOCIATION, THE WASHINGTON ACADEMY OF EYE PHYSICIANS
AND SURGEONS, THE WASHINGTON CHAPTER OF THE AMERICAN
ACADEMY OF PEDIATRICS, THE NORTHWEST ACADEMY OF
OTOLARYNGOLOGY, THE WASHINGTON ACADEMY OF FAMILY
PHYSICIANS, THE WASHINGTON STATE MEDICAL GROUP
MANAGEMENT ASSOCIATION
IN SUPPORT OF RESPONDENTS

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I. IDENTITY AND INTEREST OF AMICI

The Washington State Medical Association ("WSMA") is a statewide professional association of physicians, surgeons, and physician assistants with approximately 9,000 members.¹ The American Medical Association, the Washington Osteopathic Medical Association, the Benton-Franklin County Medical Society, the Pierce County Medical Society, the Thurston-Mason County Medical Society, the Clark County Medical Society, the Yakima County Medical Society, the Spokane County Medical Society, the Walla Walla Valley Medical Society, the Washington Society of Physical Medicine & Rehabilitation, the American Society of Anesthesiologists, the Washington State Society of Anesthesiologists, the Washington State Psychiatric Association, the Washington Academy of Eye Physicians and Surgeons, the Washington Chapter of the American Academy of Pediatrics, the Northwest Academy of Otolaryngology, the Washington Academy of Family Physicians, and the Washington State Medical Group Management Association each are societies and associations of professionals in the medical field whose members are committed to improving the quality and accessibility of

¹ All references in this brief to "physicians" will mean both medical (allopathic) and osteopathic physicians.

health care for the residents of the State of Washington and nationally.² WSMA and most of the other medical societies and associations (referred to hereafter collectively as the “Medical Association Amici”) have been in existence for over 100 years. The Medical Association Amici have actively worked with the Washington State Legislature throughout the last century on legislation affecting the practice of medicine, and possess comprehensive historical and contemporary knowledge of how health care is delivered in the State of Washington.

Health care professionals have invested a significant amount of time, resources and care in structuring their business relationships for delivering health care in the State of Washington to ensure high-quality comprehensive patient care and to comply with the complex web of laws and regulations applicable to the health care industry, many of which include civil, criminal and administrative penalties for non-compliance. The Medical Association Amici believe that the Court should be wary of writing new language into these statutes, which will substantially alter the status quo and disrupt many of these existing health care arrangements, at the behest of a small interest group and competitor, especially when there is no compelling patient care reason to do so. The Medical Association

² More detailed descriptions of each of the Medical Association Amici are provided in

Amici therefore join Respondents, Benton Franklin Orthopedic Associates, et al., in urging the Court to find that the employment of physical therapists within a physician-owned medical practice, such as Benton Franklin, does not violate the corporate practice of medicine doctrine, the Professional Service Corporation Act ("PSCA") Chapter 18.100 of the Revised Code of Washington, the Anti-Rebate Statute, Chapter 19.68 of the Revised Code of Washington, or the Professional Limited Liability Company Statute, RCW 25.15.045.³

II. STATEMENT OF THE CASE

The Medical Association Amici adopt the statement of the case set forth in pages five through eight of the Brief of Respondents.

III. ARGUMENT

Columbia Physical Therapy ("Columbia") seeks to contort two independent statutes and stretch the Court's imagination to one end – to persuade the Court to create a monopoly over the provision of physical therapy services in the State of Washington in favor of physical therapist-owned practices. If successful, Columbia not only would banish a well-established practice of physicians employing and practicing with physical

the Medical Association Amici's Motion to File an Amicus Brief.

³ From this point forward, references to the PSCA in this brief shall mean both RCW 18.100 and RCW 25.15.045, which incorporates RCW 18.100 by reference.

therapists, but such a decision would have far-reaching (and almost certainly unintended) effects, fundamentally altering the way in which health care is delivered in the State of Washington.

A. A RULING IN COLUMBIA'S FAVOR WOULD JUDICIALLY RESTRICT PHYSICIANS' LEGISLATIVELY-GRANTED SCOPE OF PRACTICE OF MEDICINE AND FORCE A LARGE NUMBER OF EXISTING PHYSICIAN PRACTICES TO CEASE PROVIDING PHYSICAL THERAPY AS AN INTEGRATED MEDICAL SERVICE.

1. The Court Should Not Judicially Restrict Physicians' Scope of Practice.

Physical therapy is within a physician's scope of practice of medicine. Columbia, however, asks the Court to rule that physician-owned professional entities, formed for the purpose of rendering professional medical services, are prohibited by the corporate practice doctrine, the PSCA and the Anti-Rebate Statute from employing physical therapists because physical therapists are legislatively intended to be a separate and distinct profession. Physical therapists may be a distinct profession from other sub-branches of the healing arts, such as nurses, radiologic technologists, optometrists and the like, and have achieved greater independence as a result of legislative action here and elsewhere, but that does not mean that physical therapy is carved out from the broader definition of a physician's scope of practice of medicine.

The physician's authorized scope of practice is broad to cover all aspects of the practice of medicine, other than chiropractic. The physicians' licensing statute (Chapter 18.71 RCW) defines the practice of medicine as offering or undertaking:

to diagnose, cure, advise or prescribe for *any* human disease, ailment, injury, infirmity, deformity, pain or other condition, physical or mental, real or imaginary, *by any means or instrumentality* . . .

RCW 18.71.011 (emphasis added).

The physical therapy licensing statute (Chapter 18.74 RCW) was enacted to permit persons with certain education and training to provide a specific subset of health care without being accused of engaging in the unlicensed practice of medicine. The statute expressly provides that it is not intended to limit any other professional's authorized scope of practice. RCW 18.74.090. The physical therapist licensing statute defines the practice of physical therapy as:

[E]xamining, evaluating and testing individuals with mechanical, physiological, and developmental impairments . . . or other health and movement-related conditions in order to determine a diagnosis, prognosis, plan of therapeutic intervention, and to assess and document the ongoing effects of intervention . . . [and] alleviating impairments and functional limitations in movement . . .

RCW 19.74.010(8). The defined scope of practice of physical therapy clearly falls within the physician's broader authorized scope of practice of medicine.⁴

By ruling in Columbia's favor, the Court would be judicially restricting the broad scope of practice of medicine granted to physicians by the Legislature, overturning long-held understandings of physicians in the State of Washington regarding the scope of health care services they may provide, and the health care delivery systems upon which those understandings are based.

If any change is to be made to a professional's scope of practice, it should be determined by the Legislature, which has created the professional licensing structures; and it should be done prospectively, following a thoughtful legislative process after receiving testimony and input from health care professionals regarding the impact of such a modification on the delivery of medical care in the State of Washington.

⁴ In fact, until 1961, physical therapy was required to be performed under the supervision of a physician, and until 1988, physical therapy was required to be subject to consultation with and periodic review by a physician or other authorized health care practitioner. *See* Laws of 1961, ch. 64 §2 (RCW 18.74.010) (deleting the requirement of physician "supervision" from the definition of physical therapist); Laws of 1983, ch. 116 § 2 (RCW 18.74.010) (replacing the requirement of physician "prescription and direction" with the phrase "performance of treatments on the basis of test findings after consultation with and periodic review by an authorized health care practitioner" in the definition of physical therapy); Laws of 1988, ch. 185 §2 (RCW 18.74.012) (deleting the requirement of consultation and periodic review with regard to neuromuscular or musculoskeletal conditions).

2. Integrated Medical Practices Provide High Quality, Cost-Effective, Comprehensive Health Care to Patients in the State of Washington.

Physician group practices employing physical therapists as part of rendering their authorized scope of practice of medicine is a common and long-standing practice in the State of Washington. In a recent survey of Washington physicians practicing in a broad range of specialties that might possibly involve physical therapy as part of treatment,⁵ WSMA found that of 305 respondents, 117 (i.e. 38%) reported that their group practice employed physical or occupational therapists.⁶

Integrating physical therapy into a physician practice can provide higher quality care in a more cost-effective manner to patients. The WSMA survey respondents identified many benefits for patient care from such integrated health care services. These benefits include:

- a. Providing the physical therapist and the physician with better access to each other's medical records, including imaging and other

⁵ Of the 305 respondents, the largest responding specialty (136) was family medicine, with the rest of the respondents practicing in such various specialties as orthopedics, occupational and physical therapy, geriatrics, internal medicine, neurology, and urgent care. Survey, WSMA (2009).

⁶ A summary of the WSMA survey results is included in the Appendix to this brief.

diagnostic studies, thus enabling them to better tailor the therapy and monitor the progress of the treatment;⁷

b. Implementing, in a more clinically-effective and cost-effective manner, the treatment plan, resulting in improved patient care outcomes attributable to more immediate communication between the therapist and the physician regarding the patient's progress under the treatment plan;⁸

c. Ensuring more prompt detection of complications from surgery, resulting in more timely intervention and treatment;

d. Encouraging higher rates of patient compliance with and completion of the physical therapy treatment plan due to convenience of an integrated location for physician and physical therapy visits;⁹ and

e. Earlier termination of physical therapy once expected therapy outcomes are achieved.

⁷ See also Paul Duxbury PT, ATC/R, *The Physician-Owned Physical Therapy Department*, 39 ORTHOPEDIC CLINICS N. AM. 49 (2008) – available at [http://www.orthopedic.theclinics.com/article/S0030-5898\(07\)00089-2/abstract](http://www.orthopedic.theclinics.com/article/S0030-5898(07)00089-2/abstract).

⁸ See also G.I. Hackett et al., *Management of Joint and Soft Tissue Injuries in Three General Practices: Value of On-Site Physiotherapy*, 43 BRITISH J. GEN. PRACTICE, 61, 63 (1993) (discussing a study comparing on-site physical therapy delivered in physician offices and physical therapy provided at other sites, and concluding that patients who receive on-site physical therapy lose less time from work and resume normal activities more quickly) - available at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC1372300/>.

⁹ See also Duxbury, *supra* note 7, at 49.

In addition, integrated care offers access to physical therapy services in rural areas (the demographics of which may not be able to support stand alone physical therapist-owned practices), without which patients would be required to forego care or travel long distances to receive needed care, resulting in more missed work, treatment delays, and worse patient outcomes.¹⁰

Certain types of health care, in fact, mandate integrated physician and physical therapy service. For example, to be eligible to provide chronic pain management services to patients covered by the Washington Department of Labor & Industries, the provider must be accredited as an interdisciplinary pain rehabilitation program by the Commission on Accreditation of Rehabilitation Facilities (CARF).¹¹ The Department of Labor & Industries mandates that the treatment phase for a chronic pain patient include medical management, psychological testing and/or treatment, and physical/occupational therapy.¹² There currently are seven multidisciplinary pain programs in Washington certified by CARF, each

¹⁰ American Academy of Orthopedic Surgeons, Physician-Owned Physical Therapy Services, Position Paper (2004), http://www6.aaos.org/news/PDFopen/PDFopen.cfm?page_url=http://www.aaos.org/about/papers/position/1166.asp.

¹¹ Washington Department of Labor & Industries, *Medical Aid Rules and Fee Schedules 2009*, available at: <http://www.lni.wa.gov/ClaimsIns/Files/ProviderPay/FeeSchedules/2009FS/FacilitySvcs/FacilitySvcsComplete.pdf>, at 183.

¹² Washington Department of Labor & Industries, *supra*, at 184.

of which states that it has physicians on staff to provide medical consultation in addition to physical therapy and other treatment modalities.¹³

If the Court were to accept Columbia's arguments in this case, it would deprive the residents of the State of Washington of the benefits of such integrated, multi-disciplinary medical care, restricting access to physical therapy in the State of Washington, and (not without significance) foreclosing a large number of job opportunities and practice options for physical therapists themselves.

B. A RULING IN COLUMBIA'S FAVOR WOULD HAVE A WIDE-RANGING, ADVERSE IMPACT ON HOW HEALTH CARE IS DELIVERED IN THE STATE OF WASHINGTON BEYOND JUST MEDICAL PRACTICES EMPLOYING PHYSICAL THERAPISTS.

1. Holding that the PSCA Sets Forth an Exclusive List of Licensed and Credentialed Professionals Who May Be Employed by a Professional Entity Would Cause an Unworkable Structure and Unintended Effects on the Delivery of Health Care in the State of Washington.

Accepting Columbia's argument that, under the PSCA, the Court should interpose the requirement that only persons who provide the "same professional services" (as defined in the PSCA) as the owners of the

¹³ Northwest Center for Integrative Medicine, Inc., Rehabilitation Institute of Washington, PLLC., St. Clare Hospital-Chronic Pain Management, St. Luke's Rehabilitation Institute, and United Backcare facilities located in Redmond, Everett, and Puyallup (See <http://www.carf.org/Consumer.aspx?Content=ConsumerSearch>)

professional entity may be employed by that professional entity leads to bizarre results that are contrary to fundamental and commonplace practices in the rendering of health care in the State of Washington.¹⁴ Under Columbia's argument only the professionals listed in RCW 18.100.050(5)(a) can practice together in, or be employed by, a professional entity owned by any such professionals. While the list in RCW 18.100.050(5)(a) covers many branches of health care, it is by no means comprehensive. If Columbia's argument were accepted and RCW 18.100.050(5)(a) was held to be an exclusive list of professions that may practice together or be employed in a professional entity together, this would mean that:

- *Dentists*, who are not listed in RCW 18.100.050(5)(a), could not practice with or employ *dental hygienists*, who are listed in RCW 18.100.050(5)(a), something that is commonplace in

¹⁴ Notably, among all (approximately) 3,340 words of the PSCA, the word "employ," "employed," or "employment" is used only twice, and in neither case in connection with any provision addressing which professionals may be employed by any particular type of professional corporation. RCW 18.100.060 uses the word "employed" once in the context of clarifying that the PSCA does not require the licensing of non-professional employees such as clerks, secretaries, etc. RCW 18.100.070 uses the word "employee" once in the context of confirming that personal liability remains for a professional's negligence and wrongdoing and that of employees under his direct supervision and control while rendering professional services.

nearly every dental office in the State of Washington and nationally.

- *Pharmacists*, who are listed in RCW 18.100.050(5)(a), could not employ or practice with *pharmacy technicians*, who are not listed, despite the fact that the pharmacy technicians' licensing statute mandates that pharmacists must supervise their training (see RCW 18.64A.020).
- *Physicians and nurses* could not employ or practice with *health care assistants* certified under RCW 18.135, despite the fact that the health care assistants' licensing statute provides they are to be trained by physicians and nurses (see RCW 18.135.040).
- *Denturists* could not be employed by *dentists*, even though RCW 18.30.150 specifically permits dentists and denturists to enter into partnerships and other business associations.
- *Surgeons* could not practice with or employ *surgical technologists*, who are not listed in RCW 18.100.050(5)(a), but whose very profession is to assist surgeons.

- *Radiologists* could not practice with or employ *radiologic technologists*, who are not mentioned in RCW 18.100.050(5)(a), even though radiologic technologists are defined to include those working under the direct supervision of a physician. (see RCW 18.84.020(4)).
- Physicians could practice with and employ professionals in virtually every other branch of the healing arts, including nurses, pharmacists, psychologists, massage practitioners, marriage and family counselors, but could not work with or employ physical and occupational therapists.

To hold that physicians, dentists and other owners of professional corporations must consult the PSCA for an exhaustive list of licensed professionals whom they may employ in the course of providing services within their authorized scope of practice is contrary to the fundamental understanding of health care professionals in the State of Washington upon which they have relied in setting up their practices and arranging to deliver comprehensive, quality, and efficient health care to patients. Many professions have such a broad scope of authorized practice under their licensing statutes, that it would be difficult, at best, for the Legislature to define every category of licensed or certified professional which a

professional service entity owned by such professional may employ, and there is no evidence that the Legislature has undertaken to do so.

2. Adopting Columbia's Arguments Would Reverse the Important Advancements in Multi-Disciplinary, Comprehensive Health Care Delivery in the State of Washington.

A ruling adopting Columbia's reading of the corporate practice doctrine, the PSCA, and the Anti-Rebate Statute, would ban not only medical practices furnishing physical therapy through employed physical therapists, but would have a broader adverse impact on a wide-range of fields in which health care is delivered in the State of Washington. Columbia's attempt to create a judicially-imposed monopoly for the exclusive benefit of physical therapist-owned practices seeks to segregate and isolate the various branches of the healing arts and, in particular, to parse out and create little fiefdoms within the health care field. This is absolutely contrary to the trend and direction in which health care has been progressing in the State of Washington and nationally.

Health care providers and experts have found that an integrated, multi-disciplinary approach to health care is more cost-effective (for patients and third party payors) and offers higher quality of care and better patient outcomes. This approach, sometimes called the "medical home" model, affords the patient a single, convenient location in which he can

receive comprehensive and coordinated care for all of his medical conditions, instead of requiring him to travel from one unrelated practice to another, carrying his medical records with him and relying on his own ability to communicate necessary information to each provider in an attempt to coordinate his own care.¹⁵ The focus in health care, now and into the future, is to provide a more efficient exchange of medical information and better patient care by integrating services, not parsing them out and isolating them.

There are good reasons for the increased emphasis on integrated, coordinated care. Studies have shown that multi-disciplinary health care teams within an integrated practice reduce medical errors, provide better coordinated care for a variety of conditions, improve the patient's access

¹⁵ See Kevin Grumbach, M.D., & Thomas Bodenheimer, M.D., *Can Health Care Teams Improve Primary Care Practice?*, 291 J. AM. MED. ASSOC. 1246 (2004) – available at <http://jama.ama-assn.org/cgi/content/abstract/291/10/1246> - (discussing the “resurgence of interest in team-based care”) (citing Institute of Medicine, *Crossing the Quality Chasm: A New Health System for the 21st Century*, WASHINGTON D.C.: NATIONAL ACADEMY PRESS (2001) (emphasizing interaction between health care professionals as one of the changes in the health care environment necessary to reform the health care delivery system)); Intermountain Health care, Kaiser Permanente, & the Mayo Clinic, *Delivery System Reform (Action Steps and Pay-For Value Approaches)* (2008), <http://www.mayoclinic.org/healthpolicycenter/pdfs/delivery-system-reform.pdf> (discussing reforms to health care delivery system and describing the failure of “cottage industry” approach to medicine while embracing integrated systems and multi-specialty group practices as existing models that should become more broadly applied—specifically noting that “patients should have access to a health care system in which health care professionals share information, learn from each other, and hold themselves and one another accountable in order to generate the best medical outcome at the most reasonable cost for each patient”).

to care, improve patient satisfaction, improve the quality of patient care and outcomes, save health care costs, give the patient a more active role in his treatment, and result in less burnout and higher satisfaction of health care professionals.¹⁶

For example, the Mayo Clinic's interdisciplinary approach combines integrated multispecialty group practice, care coordination among multiple providers, and easy access to patient health care records by all providers, and has achieved high rankings in overall patient care and several other metrics.¹⁷ Additionally, a recent study concerning implementation of the patient centered medical-home model used by Group Health in Washington State, found that when medical professionals work in multidisciplinary teams with access to on-site diagnostics and treatment methods, patients have greater satisfaction with care coordination and physicians have more time to talk to patients and

¹⁶ Grumbach, *supra* note 15, 1246–51; Benjamin G. Druss, M.D., MPH et al., *Integrated Medical Care for Patients with Serious Psychiatric Illness*, 58 ARCHIVES OF GEN. PSYCHIATRY 861, 866–67 (2001) – available at <http://ebmh.bmj.com/cgi/content/extract/5/2/46>; Dave Clements et al., *Effective Teamwork in Healthcare: Research and Reality*, 7 HEALTH CARE PAPERS, (SPECIAL ISSUE) 26, 29 (2007) – available at <http://www.longwoods.com/product.php?productid=18669>.

¹⁷ McCarthy, Douglas et al., *Mayo Clinic: Multidisciplinary Teamwork, Physician Led-Governance, and Patient Centered Culture Drive World-Class Health Care*, Case Study by the Commonwealth Fund (2009), http://www.commonwealthfund.org/~media/Files/Publications/Case%20Study/2009/Aug/1306_McCarthy_Mayo_case%20study.pdf.

troubleshoot their problems.¹⁸ These two interdisciplinary, teamwork-based providers have been cited as models for the future of health care, and have been mentioned frequently in the current health care reform debate at the national level as models designed both to improve care and reduce costs.¹⁹

Adopting Columbia's analysis that a physician practice can employ only the finite list of professionals listed in RCW 18.100.050(5)(a), and not any other professionals whose scope of practice may be within the physicians' scope of practice and whose services are important to providing comprehensive care to the patient, would stop this integrated health care model in its tracks and reverse decades of progress in improving quality of patient care and cost efficiency in the State of Washington. The result would be to move Washington backwards into an

¹⁸ Robert J. Reid, M.D., PhD, *Patient-Centered Medical Home Demonstration: A Prospective, Quasi-Experimental Before and After Evaluation*, AM. J. MANAGED CARE (2009), http://www.ajmc.com/media/pdf/AJMC_09sep_ReidWEbX_e71toe87.pdf.

¹⁹ See e.g., Martiga Lohn, *Healthy Minnesota Offers Obama Model for Nation*, ASSOCIATED PRESS, Sep. 11, 2009, *available at* http://www.google.com/hostednews/ap/article/ALeqM5i8UP4isTgZ_peZWv3YInSkMv5njAD9ALB9V02; Editorial, *Cantwell Offers Healthy Rx for Medicare*, THE NEWS TRIBUNE, Sep. 25, 2009, *available at* <http://www.thenewstribune.com/opinion/editorials/story/892618.html> (noting that in coordinated providers like the Mayo Clinic and Group Health: "coordinated treatment is delivered in a health care organization that knits together primary care doctors with specialists. For the patient, it's one-stop shopping. Every doctor knows what the other doctors are doing. Patients are not constantly asked the same questions. Medical records are not duplicated. Prescriptions don't conflict.").

inefficient, reactionary backwater of the national health care delivery system.

C. THE COMMON LAW CORPORATE PRACTICE OF MEDICINE DOCTRINE IS NOT IMPLICATED WHEN A PHYSICIAN GROUP PRACTICE EMPLOYS PHYSICAL THERAPISTS.

None of the principles or concerns of the common law corporate practice of medicine doctrine, such as compromising professional judgment and responsibility through lay ownership or management of professional practices, are implicated when a physician-owned professional entity employs physical therapists. Columbia asserts that Washington's corporate practice doctrine applies to the practice of physical therapy; however, that is by no means self-evident. No case in the State of Washington has applied the common law corporate practice doctrine to physical therapists; instead, in the health care field, this common law doctrine has been applied only to a finite list of professionals - physicians, dentists, and optometrists.²⁰

Not every profession is covered by the corporate practice doctrine. For example, massage therapists require education, training, a license and

²⁰ See, e.g. *Morelli v. Ehsan*, 110 Wn.2d 555, 756 P.2d 129 (1988) (physician); *Fallahzadeh v. Ghorbanian*, 119 Wn. App. 596, 82 P.3d 684 (2004) (dentist); *State v. Boren*, 36 Wn.2d 522, 219 P.2d 566 (1950) (dentist); *State ex rel. Standard Optical Co. v.*

are listed in RCW 18.100.050(5)(a). Does this mean that Gene Juarez, InSpa, and every other commercial spa in the State of Washington which employs massage therapists and has non-professional shareholders is violating the corporate practice doctrine? Likewise, pharmacists require a significant amount of education and a license and are listed in RCW 18.100.050(5)(a); however, they are routinely employed by regular (non-professional) corporations, such as drug stores (e.g. Walgreens, Rite Aid, CVS) and chain retailers with pharmacies (e.g. Walmart, Safeway).

Interestingly, it appears that more than half of physical therapy practices, providing services through an entity, in the State of Washington have not attempted to comply with the PSCA, indicating that the majority of physical therapists themselves apparently do not believe that the corporate practice doctrine applies to their profession. A search (copy attached), conducted on October 14, 2009, of the Washington Secretary of State's database for entities, formed or qualified to conduct business in the State of Washington, with the words "physical therapy," or "occupational therapy" in the name²¹ reveal that 164 of 323 (i.e. 51%) such active

Superior Court for Chelan County, 17 Wn. 2d 323, 135 P.2d 839 (1943) (optometrist).

²¹ Entities that from the name did not appear to be physical therapy practices, such as those that were associations, foundations, or real estate holding companies, were excluded from the count.

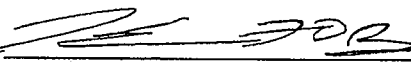
entities are not formed as professional entities (i.e. professional service corporations under RCW 18.100, professional LLC's under RCW 25.15.045, or professional limited liability partnerships), but rather have been formed as regular (non-professional) corporations, limited liability companies, limited partnerships, or limited liability partnerships. If the Court adopts Columbia's argument that physical therapists are subject to the corporate practice doctrine, then on this basis alone, it will be finding that more than half of the physical therapy practices (that are not solo individual practices or general partnerships) in the State of Washington are illegal.

IV. CONCLUSION

If the Court were to accept Columbia's analysis, it would cause a fundamental change not only in the provision of physical therapy but would alter a whole host of other unrelated, well-established business arrangements and methods of delivering health care in the State of Washington, with consequences well beyond anything the Legislature intended, or the Court, could possibly intend to implement in this single ruling. For the reasons set forth above, the Medical Association Amici respectfully request the Court to rule in favor of Benton Franklin in finding that Benton Franklin may lawfully employ physical therapists.

RESPECTFULLY SUBMITTED this 15th day of
October, 2009.

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CERTIFICATE OF SERVICE

The undersigned declares under penalty of perjury, under the laws of the State of Washington, that on October 15, 2009, I served via email, with each party's prior approval of electronic service, a true and correct copy of BRIEF OF AMICI CURIAE addressed to:

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DATED this 15th day of October, 2009, at Seattle, Washington.



Verna M. Garton

Appendix

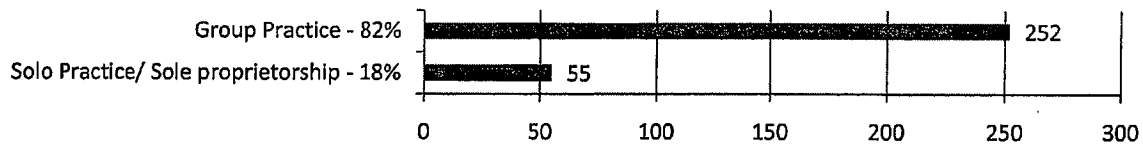
APPENDIX

- 1. Washington State Medical Association Survey Results
Summary**
- 2. Washington Secretary of State Database Search Results
October 14, 2009**

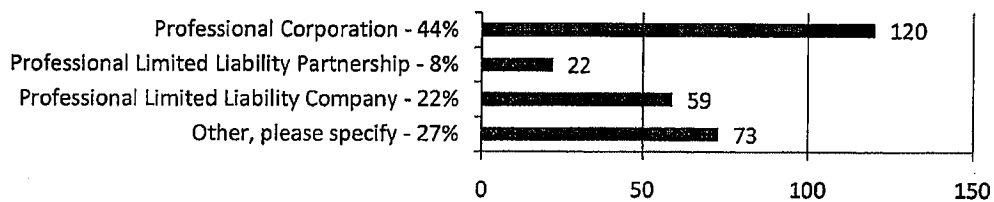
**SUMMARY OF RESULTS OF 2009 WASHINGTON STATE MEDICAL
ASSOCIATION SURVEY REGARDING PHYSICAL THERAPIST
EMPLOYMENT**

Physical Therapist Employment

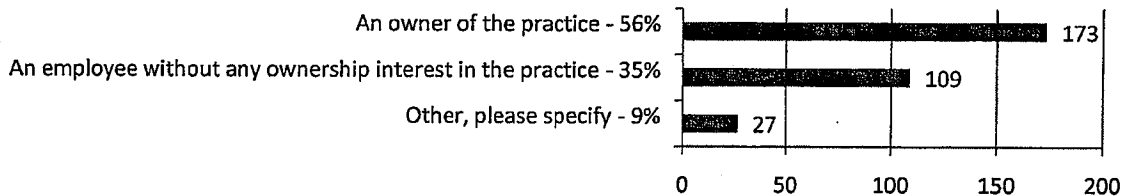
1. Please indicate if you practice in a:



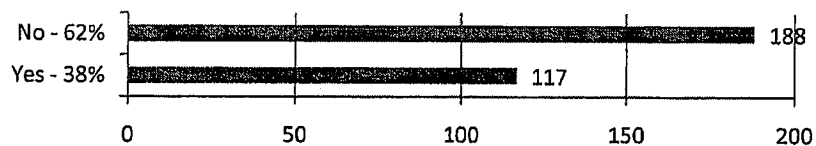
2. If this is a group practice, please specify the type of business entity:



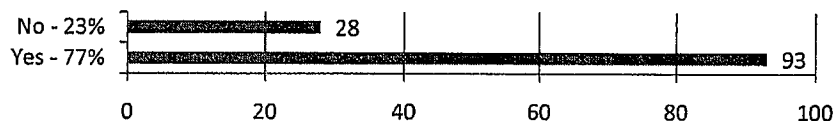
3. Please indicate if you are:



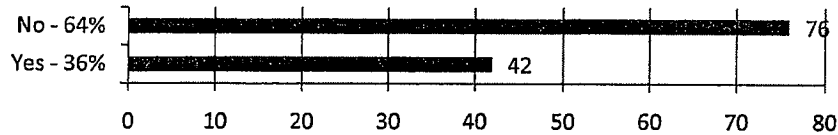
4. Does this practice have employees who are physical therapists or occupational therapists?



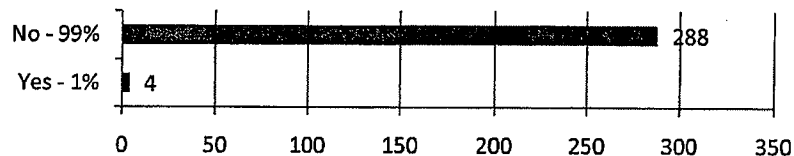
5. If you answered "Yes" to Question 4, do the physical therapists or occupational therapists provide services at the same site, i.e., at the same practice location, as the physician(s)?



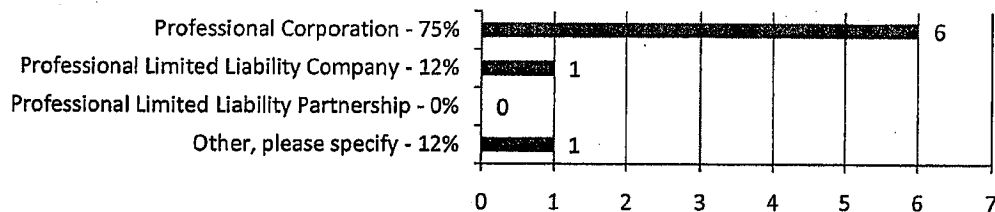
6. If you answered "Yes" to Question 4, do the physical therapists or occupational therapists provide services at any location that is "off site", i.e., at a location other than the same site as the physician(s)?



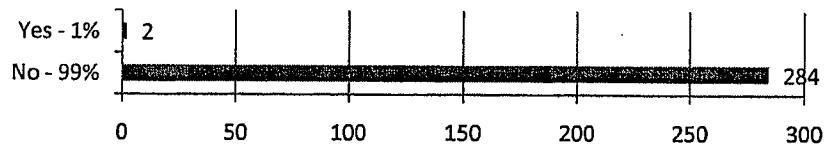
7. Do any of the physicians in this practice own an interest in a physical therapy practice or occupational therapy practice in which one or more physical therapists or occupational therapists also is an owner, i.e., the physicians and the therapists are co-owners?



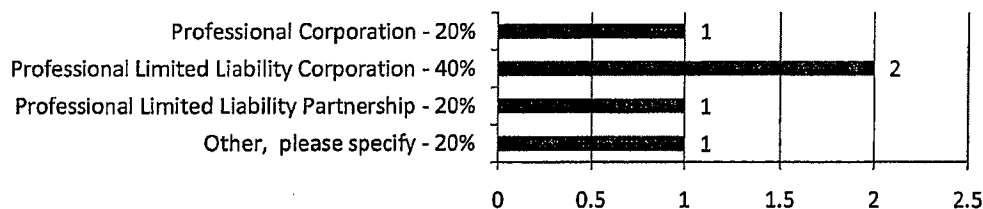
8. If you answered "Yes" to Question 7, please select or describe the type of business entity or ownership structure.



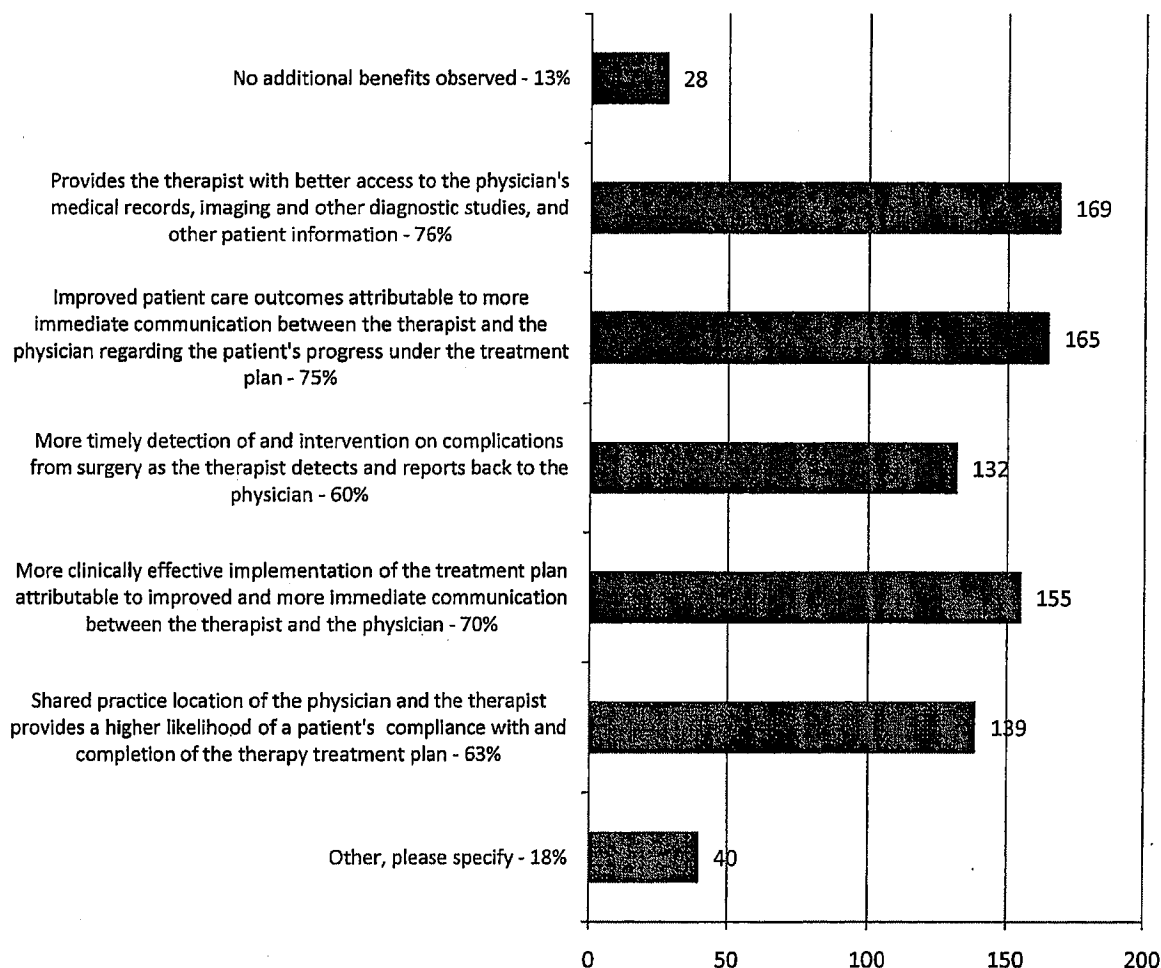
9. Do any of the physicians in this practice co-own with one or more physical therapists or occupational therapists any other type of professional business entity?



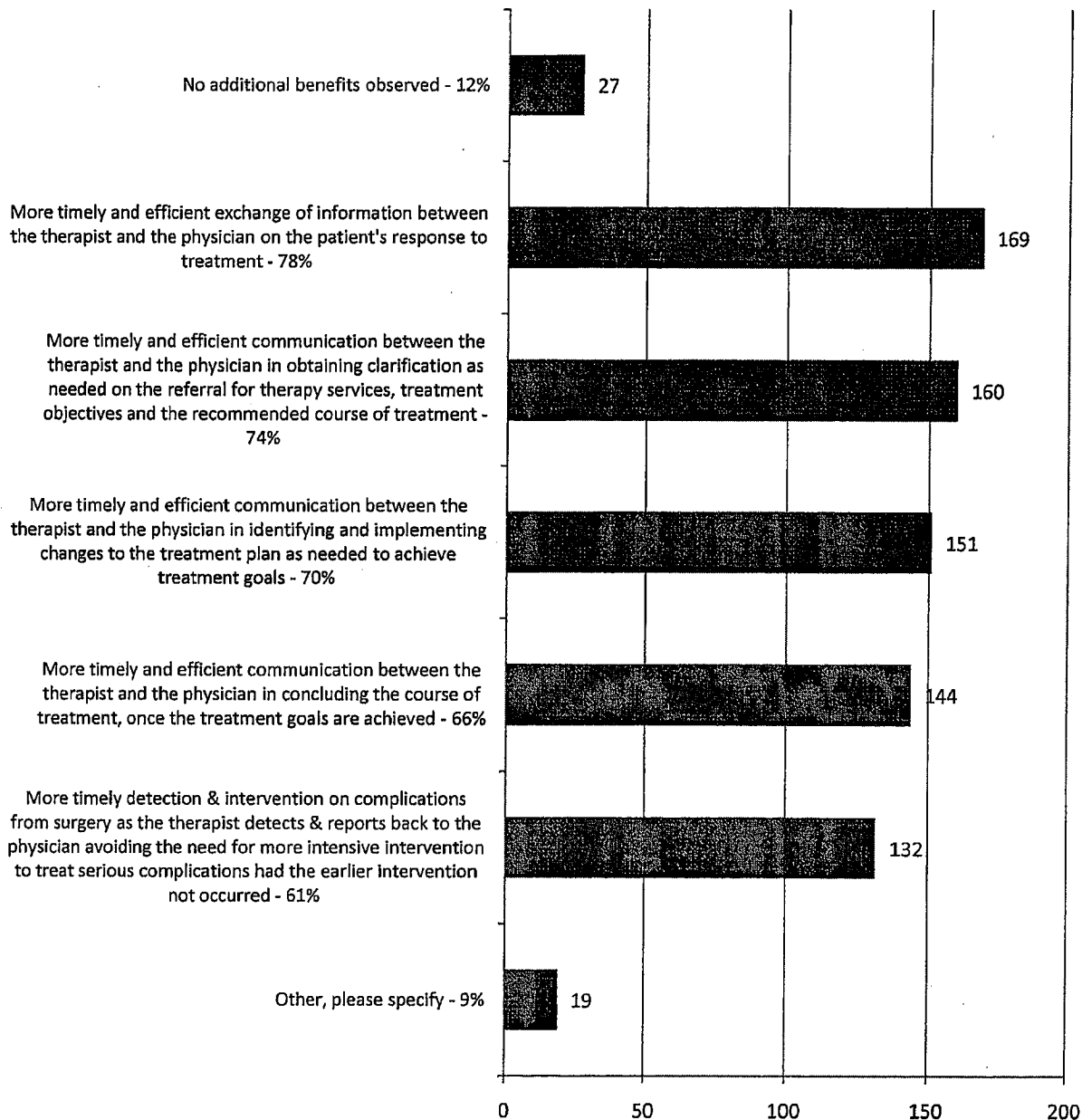
10. If you answered "Yes" to Question 9, please briefly describe the type of business entity or ownership structure?



11. What do you believe are the additional benefits to the quality of patient care provided at this practice, attributable to these patients being treated by physical therapists or occupational therapists who are employed by, or who are co-owners of, this practice (as compared to patients being treated at a separate unaffiliated physical therapy practice)? Please check all that apply.



12. What do you believe are the additional benefits to the efficiency of healthcare delivery provided at this practice, attributable to these patients being treated by physical therapists or occupational therapists who are employed by, or who are co-owners of, this practice (as compared to patients being treated at a separate unaffiliated physical therapy practice)? Please check all that apply.



13. In what specialty do you practice?

CORF accredited pain management program
Dermatology
Emergency Medicine
Family Medicine - 136
Family & Sports Medicine - 3
Family medicine, anti-aging medicine with a
metabolic focus
Family Medicine/Urgent Care - 2
Family/Geriatrics
FP Multispecialty medical director
G.P.
Geriatric Medicine - 3
Geriatrics/Internal Medicine
Hand Surgery - 2
Hospice and Palliative Medicine - 2
Hospitalist
Internal Medicine - 4
Interim CEO
Internal Medicine/ Geriatrics
Internal Medicine, Geriatric, Hospice & Palliative
Medicine, Wound Care
Neurology - 19

Occupational Medicine - 8
Orthopedics - 42
Orthopedics Trauma
Orthopedics/ Hand Surgery - 3
Orthopedics/ Sports Medicine
Orthopedic Spine Surgery
Orthopedic Surgery - 36
Orthopedic Surgery - Sports Medicine - 2
Otolaryngology
Pain Management and Neurology
PCP
Pediatric General Surgery
Pediatric Orthopedics - 2
Physiatrist
Physical Medicine & Rehabilitation - 17
Plastic and Hand Surgery
Rehabilitation Medicine
Sports Medicine - 2
Urgent Care - 4
Wound Care

**PRINT OUT OF RESULTS OF OCTOBER 14, 2009 SEARCH OF
WASHINGTON SECRETARY OF STATE DATABASE**



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[A STEP AHEAD PHYSICAL THERAPY LLC](#)
[A I M PHYSICAL THERAPY INC](#)
[ABILITY PHYSICAL THERAPY P S](#)
[ACCELERATED PHYSICAL THERAPY LLC](#) *Inactive*
[ACCELERATION PHYSICAL THERAPY P L L C](#)
[ACHIEVE PHYSICAL THERAPY PLLC](#)
[ACT PHYSICAL THERAPY REHABILITAION INC](#)
[ACTION PHYSICAL THERAPY INC](#)
[ACTION REACTION PHYSICAL THERAPY INC](#)
[ACTIVE LIFE PHYSICAL THERAPY LLC](#)
[ACTIVE PHYSICAL THERAPY LLC](#)
[ADVANCE PHYSICAL THERAPY SPORTS REHABILITATION INC](#)
[ADVANCE PHYSICAL THERAPY AND SPORTS REHABILITATION LLC](#) *Inactive*
[ADVANCE PHYSICAL THERAPY OF ORTING INC](#)
[ADVANCED PHYSICAL AND OCCUPATIONAL THERAPY PLLC](#) *Inactive*
[ADVANCED PHYSICAL THERAPY AND BALANCE REHABILITATION LLC](#) *Inactive*
[ADVANTAGE PHYSICAL THERAPY P S](#)
[ADVENCED RUSSIAN PHYSICAL MASSAGE THERAPY LLC](#) *May not be PT Practice*
[ADVENTURE PHYSICAL THERAPY P S](#)


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~~ADVENTURE PHYSICAL THERAPY P S~~ Duplicate
AEGIS PHYSICAL THERAPY INC PS
AIRPORT PHYSICAL THERAPY INC
ALLIANCE PHYSICAL THERAPY LLC
ALPHA OMEGA PHYSICAL THERAPY P S
~~ALPINE AQUATIC PHYSICAL THERAPY LLC~~ Inactive
ALTERNATIVE BACK CARE PHYSICAL THERAPY INC
ALTIUS PHYSICAL THERAPY LLC
ALTUS PHYSICAL THERAPY INC
ANACORTES PHYSICAL THERAPY INC P S
ANCHOR PHYSICAL THERAPY PLLC
ANDERSON CATTONE PHYSICAL THERAPY INC
ANDERSON PHYSICAL THERAPY LLC
APEX PHYSICAL THERAPY P L L C
~~APPLE PHYSICAL THERAPY FOUNDATION~~ Not a PT Practice
APPLE PHYSICAL THERAPY P S
ARGONAUT PEAK PHYSICAL THERAPY INC P S
ASCENT PHYSICAL THERAPY SERVICE P L L C
ASSOCIATES IN PHYSICAL THERAPY PROFESSIONAL LIMITED LIABILITY COMPANY

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ASSOCIATES IN PHYSICAL THERAPY PROFESSIONAL LIMITED LIABILITY COMPANY

Duplicate

AUBURN SPORTS PHYSICAL THERAPY LLC

AURORA VILLAGE PHYSICAL THERAPY INC

AXIS PHYSICAL THERAPY INC

B B PHYSICAL THERAPY INC

BACK TO HEALTH PHYSICAL THERAPY INC

BACK TO WORK PREVENTION PHYSICAL THERAPY INC

BAINBRIDGE ISLAND PHYSICAL THERAPY LLC

BALANCE PHYSICAL THERAPY INC P S

BALANCE POINT PHYSICAL THERAPY CLINIC LTD

BALANCED PHYSICAL THERAPY LLC

BATTLEGROUND PHYSICAL THERAPY INC P S

BELLEVUE PHYSICAL THERAPY INC P S

BELLEVUE SPORTS SPINE PHYSICAL THERAPY P S

BELLEVUE REDMOND PHYSICAL THERAPY CENTER INC

BELLINGHAM PHYSICAL THERAPY L L C

BENSON PHYSICAL THERAPY INC P S

Inactive

BENTON FRANKLIN PHYSICAL THERAPY INC

Inactive

BONNEY LAKE PHYSICAL THERAPY AND HAND REHAB PLLC

BURLINGTON PHYSICAL THERAPY LLC

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BURLINGTON PHYSICAL THERAPY LLC
BURLINGTON PHYSICAL THERAPY LLC
BURLINGTON PHYSICAL THERAPY LLC
BURLINGTON PHYSICAL THERAPY LLC Duplicate of above
BYERLY PHYSICAL THERAPY II INC P S Inactive
BYERLY PHYSICAL THERAPY PLLC
CANDOO PHYSICAL THERAPY LLC
CANYON CREEK PHYSICAL THERAPY LLC Inactive
CANYON PARK PHYSICAL THERAPY PLLC
CAPITOL PHYSICAL THERAPY P L L C
CARE PHYSICAL THERAPY INC Inactive
CASCADE PHYSICAL THERAPY AND SPORTS CLINIC INC PS
CASCADE PHYSICAL THERAPY LLC
CASCADE SUMMIT PHYSICAL THERAPY INC P S
CASCADIA PHYSICAL THERAPY PLLC
CASHMERE PHYSICAL THERAPY L L C
CEDAR CREEK PHYSICAL THERAPY LIMITED PARTNERSHIP
CENTER FOR PHYSICAL THERAPY INC
CENTRAL PHYSICAL THERAPY AND FITNESS INC
CENTRAL WASHINGTON PHYSICAL THERAPY P S

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~~CHEWELAH ORTHOPEDIC SPORTS PHYSICAL THERAPY INC P S~~
~~CHINOOK PHYSICAL THERAPY ASSOCIATES P S~~
~~CHRISTOPHER COX PHYSICAL THERAPY INC~~
~~COLUMBIA BASIN PHYSICAL THERAPY INC P S~~
~~COLUMBIA PHYSICAL THERAPY SERVICES INC P S~~
~~COLUMBIA PHYSICAL THERAPY INC P S~~
~~COMSTOCK PHYSICAL THERAPY LTD P S~~
~~COPPERSMITH ORTHOPEDIC AND SPORTS PHYSICAL THERAPY INC~~
~~CORE PHYSICAL THERAPY P C~~
~~COURT CLUB PHYSICAL THERAPY LLC~~
~~CREEKSIDE PHYSICAL THERAPY P L L C~~
~~DAVE COLESCOTT PHYSICAL THERAPY PLLC~~ Inactive
~~DAVID ROSS PHYSICAL THERAPY P S~~
~~DAVINCI PHYSICAL THERAPY PLLC~~
~~DAVIS PHYSICAL THERAPY INC~~ Inactive
~~DEER PARK PHYSICAL THERAPY P S~~
~~DIRKSEN PHYSICAL THERAPY INCORPORATED P S~~ Inactive
~~DISCOVERY PHYSICAL THERAPY INC PS~~
~~DOMINATE PHYSICAL THERAPY LLC~~

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DONALDSON PHYSICAL THERAPY TACOMA LLC *Inactive*
DYNAMIC BRACING PHYSICAL THERAPY INC
DYNAMIC PHYSICAL THERAPY INC *Inactive*
EAGLE ROCK PHYSICAL THERAPY P S
EASTSIDE PHYSICAL THERAPY INC P S
EASTSOUND PHYSICAL THERAPY PROPERTIES LLC *Not PT Practice?*
EDMONDS PHYSICAL THERAPY SPORTS REHABILITATION P S
ELITE PHYSICAL THERAPY AND SPORTS REHAB INC *Inactive*
ELITE PHYSICAL THERAPY AND SPORTS REHAB LIMITED LIABILITY COMPANY LLC
ELITE PHYSICAL THERAPY ASSOCIATES LLC
ELITE PHYSICAL THERAPY GROUP LLC
ELLENSBURG PHYSICAL THERAPY CENTER P S *Inactive*
ELLIOT BAY PHYSICAL THERAPY LLC
EVERETT PHYSICAL THERAPY AND SPORTS PERFORMANCE CENTER LLC
EVERGREEN PHYSICAL THERAPY CLINIC P S *Inactive*
EVERYBODY PHYSICAL THERAPY LLC
EXCEL PHYSICAL THERAPY AND SPORTS REHABILITATION INC P S
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~~FAMILY PHYSICAL THERAPY AND SPORTS REHABILITATION A PROFESSIONAL~~
~~FAMILY PHYSICAL THERAPY PLLC~~
~~FAMILYCARE PHYSICAL THERAPY FITNESS CLINIC INC~~
~~FANKHAUSER PHYSICAL THERAPY ORTHOPEDIC AND SPORTS REHABILITATION INC~~ Inactive
~~FANKHAUSER PHYSICAL THERAPY L L C~~ Inactive
~~FIRST REHABILITATION PHYSICAL THERAPY INC~~
~~FISHERS LANDING PHYSICAL THERAPY LLC~~
~~FLEX PHYSICAL THERAPY P S~~
~~FOCUS PHYSICAL THERAPY PLLC~~
~~FOOTHILLS PHYSICAL THERAPY LLC~~
~~FOOTWORKS PHYSICAL THERAPY LLC~~
~~FORWARD MOTION PHYSICAL THERAPY LLC~~
~~FOUR SEASONS PHYSICAL THERAPY L L P~~
~~FRIDAY HARBOR PHYSICAL THERAPY AND REHABILITATION INC~~ Inactive
~~FRONTIER PHYSICAL THERAPY P S~~
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~~GRAVELLY LAKE PHYSICAL THERAPY INC~~ Duplicate
~~GREATER SPOKANE PHYSICAL THERAPY P S~~ Inactive
~~GREENLAKE SPORTS PHYSICAL THERAPY INC~~
~~GREENWOOD PHYSICAL THERAPY P L L C~~
~~HAPPY VALLEY PHYSICAL THERAPY P S~~
~~HARADA PHYSICAL THERAPY REHAB SERVICES INC P S~~
~~HARBOR PHYSICAL THERAPY SERVICES P S~~
~~HEALTH WORKS PHYSICAL THERAPY P S~~ Inactive
~~HIGHLAND COMMUNITY PHYSICAL THERAPY LLC~~
~~HOLLINGBERRY PHYSICAL THERAPY P L L C~~
~~HUGHES PHYSICAL THERAPY P S~~
~~IMPACT PHYSICAL THERAPY PS~~
~~IN MOTION PHYSICAL THERAPY PLLC~~
~~INDEPENDENCE PHYSICAL THERAPY PLLC~~
~~INDEPENDENCE THROUGH PHYSICAL THERAPY P S~~
~~INDEPENDENT PHYSICAL THERAPY ASSOCIATES P L L C~~
~~INDEPENDENT PHYSICAL THERAPY INC~~
~~INGLEWOOD PHYSICAL THERAPY P S~~

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~~INNOVATIVE PHYSICAL THERAPY INC~~ *Inactive*
~~INTEGRAL PHYSICAL THERAPY INC~~
~~INTEGRATIVE PHYSICAL THERAPY SERVICES P S~~
~~INTEGRATIVE PHYSICAL THERAPY P L L C~~
~~INTEGRITY PHYSICAL THERAPY LLC~~ *Inactive*
~~INTEGRITY PHYSICAL THERAPY P S~~
~~INTERMOUNTAIN SPORTS MEDICINE PHYSICAL THERAPY P S~~ *Inactive*
~~ISLAND PHYSICAL THERAPY ASSOCIATES INC~~ *Inactive*
~~ISLANDERS PHYSICAL THERAPY AND REHABILITATION INC~~
~~ISSAQUAH PHYSICAL THERAPY INC~~
~~JENNINGS PHYSICAL THERAPY INC~~
~~KATHE WALLACE PHYSICAL THERAPY PLLC~~
~~KELLY LUNDA PHYSICAL THERAPY P S~~
~~KENT EASTHILL PHYSICAL THERAPY P S~~
~~KENT PHYSICAL THERAPY SPORTS PERFORMANCE CENTER LLC~~
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[LAKE CHELAN PHYSICAL THERAPY P S](#)
[LAKE FOREST PARK PHYSICAL THERAPY PLLC](#)
[LAKELAND SPORTS SPINE PHYSICAL THERAPY PLLC](#)
[LARRY HAM ASSOCIATES PHYSICAL THERAPY P S](#)
[LEWIS RIVER PHYSICAL THERAPY LLC](#) *Inactive*
[LIBERTY PHYSICAL THERAPY LLC](#)
[LIFE IN BALANCE PHYSICAL THERAPY AND PILATES LLC](#)
[HLAC CITY PHYSICAL THERAPY SPORTS REHAB LLC](#) *Inactive*
[LONGVIEW PHYSICAL AND SPORTS THERAPY SERVICES P S](#)
[LONGVIEW PHYSICIANS PHYSICAL THERAPY SERVICE INC](#)
[LOUDON ORTHOSPORT PHYSICAL THERAPY PLLC](#)
[LYNDEN FAMILY PHYSICAL THERAPY PS INC](#)
[MACARTHUR PHYSICAL THERAPY CONSULTING SERVICE P S](#)
[MAIN STREET PHYSICAL THERAPY P S](#) *Inactive*
[MAPLE LEAF PHYSICAL THERAPY PLLC](#)
[MAPLE VALLEY PHYSICAL THERAPY INC](#) *Inactive*
[MARIA T ZANONI PHYSICAL THERAPY PS](#) *Inactive*

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MARIA T ZANONI PHYSICAL THERAPY PS Duplicate
MARINE VIEW PHYSICAL THERAPY INC
MARINELAND PHYSICAL THERAPY PLLC
MARITIME PHYSICAL THERAPY PLLC Inactive
MARRAN PHYSICAL THERAPY LLC
MARYSVILLE PHYSICAL THERAPY INC P S
MEDICAL CENTER PHYSICAL THERAPY INC P S
MEGAN YOUNT PHYSICAL THERAPY SERVICES PLLC Inactive
MICHELE DONOHUE S PHYSICAL THERAPY LLC
MICHELE TOWNSHEND PHYSICAL THERAPY SERVICES PLLC Inactive
MIDWAY PHYSICAL THERAPY LLC Inactive
MILESTONE PHYSICAL THERAPY INC
MILL CREEK PHYSICAL THERAPY SPORTS REHABILITATION CLINIC P S
MOMENTUM PHYSICAL THERAPY PLLC Inactive
MONTESANO PHYSICAL THERAPY INC
MOSES LAKE SPORTS PHYSICAL THERAPY P S
MOUNTAIN PHYSICAL THERAPY AND SPORTS REHABILITATION LLC
MOUNTAINVIEW PHYSICAL THERAPY INC


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Cc: Kristi O'Brien; Ben VandenBerghe
Subject: RE: Supreme Court Filing - Columbia Physical Therapy, Inc., P.S. v. Benton Franklin Orthopedic Associates, P.L.L.C.; et al.

Rec. 10-15-09

From: Verna Garton [mailto:vgarton@mpba.com]
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Cc: Kristi O'Brien; Ben VandenBerghe
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Dear Clerk:

Case Name: Columbia Physical Therapy, Inc., P.S. v. Benton Franklin Orthopedic Associates, P.L.L.C.; et al.
Cause Number: 81734-1

Attached for filing please find:

1. Motion to File Amicus Brief; and
2. Brief of Amici Curiae, with attached appendices. The appendices are 27 pages long and prior approval has been obtained to file them electronically.


These documents are filed by:

Kristiana Farris O'Brien
206-682-7090
WSBA No. 29322
Email: kobrien@mpba.com

Verna Garton, Legal Assistant | Montgomery Purdue Blankinship & Austin PLLC

701 Fifth Avenue, Suite 5500, Seattle, WA 98104 (206) 682-7090 Fax: (206) 625-9534 vgarton@mpba.com www.mpba.com

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